ONG KEH KEONG v. LEMBAGA TATATERTIB PEGUAM-PEGUAM

HIGH COURT MALAYA, SHAH ALAM
VAZEER ALAM MYDIN MEERA J
[JUDICIAL REVIEW NO: BA-25-154-12-2016]
13 SEPTEMBER 2018

LEGAL PROFESSION: *Complaint against advocate and solicitor – Disciplinary proceedings – Disciplinary Committee ('DC') found solicitor guilty of dishonest and fraudulent conduct – Disciplinary Board ('DB') concurred with DC's findings on liability but disagreed with recommendation of punishment – DB issued notice to solicitor pursuant to s. 103D(2) and (4) of Legal Profession Act 1976 ('LPA 1976') for solicitor to make representation before pronouncement of punishment – Solicitor applied for judicial review to quash or set aside DB's order affirming findings of DC – Whether decisions made during course of statutory tribunal or administrative body's proceedings ought not to be challenged until proceedings completed – Whether solicitor could not avail himself of his statutory rights enshrined in s. 103EA of LPA 1976 – Whether DB acted within statutory provisions of s. 103D(2) of LPA 1976 – Whether judicial review application premature and abuse of process of court – Legal Profession (Amendment) Act 2012, s. 21(4), (5)*

ADMINISTRATIVE LAW: *Judicial review – Certiorari – Application for – Complaint against advocate and solicitor – Disciplinary proceedings – Disciplinary Committee ('DC') found solicitor guilty of dishonest and fraudulent conduct – Disciplinary Board ('DB') concurred with DC's findings on liability but disagreed with recommendation of punishment – DB issued notice to solicitor pursuant to s. 103D(2) and (4) of Legal Profession Act 1976 ('LPA 1976') for solicitor to make representation before pronouncement of punishment – Solicitor applied for judicial review to quash or set aside DB's order affirming findings of DC – Whether decisions made during course of statutory tribunal or administrative body's proceedings ought not to be challenged until proceedings completed – Whether solicitor could not avail himself of his statutory rights enshrined in s. 103EA of LPA 1976 – Whether DB acted within statutory provisions of s. 103D(2) of LPA 1976 – Whether judicial review application premature and abuse of process of court – Legal Profession (Amendment) Act 2012, s. 21(4), (5)*

The complainant made a complaint against the applicant, an advocate and solicitor, to the respondent as the statutory body established under the Legal Profession Act 1976 ('LPA 1976'). The complainant alleged that the applicant had acted fraudulently in a sale and purchase agreement ('SPA') between the complainant and the purchasers. Acting on the complaint, the respondent, pursuant to s. 103A of the LPA 1976, appointed a Disciplinary Committee ('DC') to formally inquire and investigate the complaint. The DC found the applicant guilty of dishonest and fraudulent conduct in breach of s. 94(3) of the LPA 1976 and guilty of conduct unbefitting of an advocate and solicitor under s. 94(3) (o) of the LPA 1976. The DC recommended to

the respondent that the applicant be suspended from practice for one month and be imposed a fine of RM5,000. The respondent concurred with the DC's findings on liability, but disagreed with its recommendation on punishment. Accordingly, with a view to imposing an enhanced punishment, the respondent issued a notice to the applicant pursuant to s. 103D(2) and (4) of the LPA 1976 for the applicant to appear and be heard. However, upon the written request of the applicant, the hearing was adjourned. Whilst the aforesaid hearing was pending before the respondent, upon the applicant's application for leave to issue judicial review, this court granted leave to the applicant to commence judicial review proceedings to, *inter alia,* quash or set aside by an order of *certiorari* the entire decision of the respondent in affirming the findings of the DC as regards the applicant's liability and the report of the DC. The respondent, *via* notice of application ('encl. 7') sought to strike out this judicial review application pursuant to O. 18 r. 19(1)(b) or (d) on grounds that it was scandalous, frivolous and/or was otherwise an abuse of the process of the court.

Held (striking out applicant's application for judicial review; allowing encl. 7):

(1) As a general rule, in the absence of any jurisdictional issues, decisions made during the course of a statutory tribunal or administrative body's proceedings ought not to be challenged until proceedings have been completed. The most appropriate stage for the applicant to raise any dissatisfaction he may have with regards to the conduct of the DC, or even the respondent, was to wait for the conclusion of the proceedings and for the respondent to make a decision or order. Hence, to that extent, the filing of this judicial review application was premature. (paras 8 & 9)

(2) By virtue of the saving provisions in s. 21(4) and (5) of the Legal Profession (Amendment) Act 2012, s. 103EA of the LPA 1976 did not have any application to the present case. Thus, the applicant's reliance on the provisions of s. 103EA of the LPA 1976 to ground his application for judicial review was misplaced in law. The applicant could not avail himself of his statutory rights enshrined in s. 103EA of the LPA 1976. The saving provisions in s. 21(4) and (5) of the Legal Profession (Amendment) Act 2012 state very clearly that in respect of complaints made before the coming into force of the Legal Profession (Amendment) Act 2012, and in respect of disciplinary proceedings pending before the respondent when the Legal Profession (Amendment) Act 2012 came into force, the principal Act then prevailing shall continue to apply. Hence, from the reading of the then s. 103E(2) of the LPA 1976, the law as it then stood precluded moving the respondent's decision of 13 October 2016 into this court for judicial review. (paras 13, 16 & 17)

(3) For this court to exercise its inherent jurisdiction and disregard any privative clause, there must be clear evidence of the respondent having made an error of law that takes it outside its jurisdiction. Herein, there were no such jurisdictional errors having been committed by the respondent. The respondent was clearly acting within the statutory provisions of s. 103D(2) and (4) of the LPA 1976 in accepting and affirming the DC's findings on liability but rejecting its recommendation on punishment. The respondent had given the required statutory notice to the applicant to appear and make representations at the hearing before it pronounced the punishment. Thus, this application for judicial review was an abuse of the process of the court. (para 18)

Case(s) referred to:

Cheah Foong Chiew v. Lembaga Jurutera Malaysia [1999] 3 CLJ 242 CA ***(refd)***
Dr Colin Lee Soon Soo v. Majlis Perubatan Malaysia [2011] 1 CLJ 907 HC ***(refd)***
Ling Leong Peng v. Wong Kee Teh & Anor [2015] 10 CLJ 444 HC ***(refd)***
Majlis Perbandaran Pulau Pinang v. Syarikat Bekerjasama-sama Serbaguna Sungai Gelugor Dengan Tanggungan [1999] 3 CLJ 65 FC ***(refd)***
Re Anti-Dumping Act and In Re Danmor Co. Ltd [1974] 1 FC 22 ***(refd)***
Tetuan Choong & Co & Ors v. Lembaga Tatatertib Peguam-Peguam [2004] 1 CLJ 574 HC ***(refd)***

Legislation referred to:

Legal Profession Act 1976, ss. 94(3)(c), (o), 103A, 103B(1A), 103D(2), (3), (4), 103EA(1), (4), (5), (6)
Rules of Court 2012, O. 18 rr. 19(1)(b), (d)

For the applicant - In person
For the respondent - Hoi Jack S'ng; M/s Lee Hishammuddin Allen & Gledhill

Reported by Suhainah Wahiduddin

JUDGMENT

Vazeer Alam Mydin Meera J:

[1] The applicant, *via* this judicial review, seeks amongst others, to set aside the decision of the respondent dated 13 October 2016 and the report of the Disciplinary Committee dated 28 June 2016.

[2] The respondent, *via* notice of application (encl. 7), seeks to strike out this judicial review application pursuant to O. 18 rr. 19(1)(b) or (d) of the Rules of Court 2012, on grounds that it is scandalous, frivolous or vexatious and/or is otherwise an abuse of process of the court.

[3] The factual background to this judicial review application is as follows:

(i) By a letter dated 26 September 2013, one Chuah Gek Lye ("complainant") made a complaint against the applicant, an advocate and solicitor, to the respondent as the statutory body established under the Legal Profession Act 1976 in matters relating to discipline of advocates and solicitors.

(ii) The complaint in essence was that:

(a) the complainant and his daughter were co-owners of a property located in Kota Kemuning, Shah Alam, Selangor (property");

(b) the complainant and his daughter entered into a sale and purchase agreement dated 1 April 2013 ("SPA") to sell the property to Khor Hang Cheng and Khor Zhi Yang ("purchasers");

(c) the applicant acted as solicitor for the purchasers in the SPA, whilst the complainant and his daughter were not represented in the transaction;

(d) the complainant alleges that the applicant had, without the complainant's knowledge or consent, amended or altered certain terms in the SPA;

(e) the alleged amendments or alterations to the SPA were purportedly done to avoid the purchasers from having to pay late payment interest; and

(f) the complainant in the circumstances contends that the applicant had acted fraudulently.

(iii) Acting on the complaint, the respondent had on 16 February 2015, pursuant to s. 103A of the Legal Profession Act 1976, appointed Samskrita Kemkumar Saviour Lopez a/l Gracian Lopez, Ng Thiang Tuan and Venugopal a/l Balan Mannadiar as members of the Disciplinary Committee to formally inquire and investigate the complaint.

(iv) The Disciplinary Committee commenced its inquiry and conducted hearings on the complaint on 15 July 2015, 22 September 2015, 28 October 2015, 8 January 2016 and 26 April 2016. The Disciplinary Committee found the applicant:

(a) guilty of dishonest and fraudulent conduct in breach of s. 94(3)(c) of the Legal Profession Act 1976; and

(b) guilty of conduct unbefitting of an advocate and solicitor under s. 94(3)(o) of the Legal Profession Act 1976.

(v) The Disciplinary Committee recommended to the respondent that the applicant be suspended from practice for one month and be imposed a fine of RM5,000. A

(vi) The Disciplinary Committee forwarded their findings and recommendation to the respondent as is required under s. 103B(1A) of the Legal Profession Act 1976. B

(vii) The respondent considered the Disciplinary Committee's Report at its meeting on 13 October 2016, where the respondent concurred with Disciplinary Committee's findings on liability, but disagreed with its recommendation on the punishment. Accordingly, with a view to imposing an enhanced punishment, the respondent issued a notice dated 4 November 2016 to the applicant pursuant to s. 103D (2) and (4) of the Legal Profession Act 1976 for the applicant to appear and be heard on 9 December 2016. However, upon the written request of the applicant *via* his letter dated 9 December 2016, the hearing on 9 December 2016 did not proceed and was adjourned to 17 February 2017, and subsequently brought forward to 10 February 2017. C D

(viii) Whilst the aforesaid hearing was pending before the respondent, upon the applicant's application dated 19 December 2016 for leave to issue judicial review, this court had on 8 February 2017 granted the following orders: E

(a) leave to the applicant to commence judicial review proceedings to:

(aa) to quash or set aside by an order of *certiorari* the entire decision of the respondent made on 13 October 2016 where the respondent had affirmed the findings of the Disciplinary Committee as regards the applicant's liability towards the complaint; and F

(ab) to quash or set aside by an order of *certiorari* the entire report of the Disciplinary Committee dated 28 June 2016 as well as the appointment and constitution of the Disciplinary Committee be quashed; G

(b) that the disciplinary proceedings emanating from the complainant's complaint be stayed in the interim pending disposal of the judicial review application. H

(ix) By letter dated 8 February 2017, the applicant's solicitors served on the respondent, amongst others, the cause papers in this proceedings and the draft order of this court dated 8 February 2017.

(x) The respondent then filed encl. 7 to strike out this judicial review application essentially on the following grounds: I

A (a) that the decision of the respondent dated 13 October 2016 is not amenable to judicial review;

(b) the applicant has a right of appeal to the High Court pursuant to s. 103E of the Legal Profession Act 1976 in respect of any decision made by the respondent affecting the applicant. Thus, the applicant's remedy, if he is dissatisfied with the decision of the respondent dated 13 October 2016, is to wait for the respondent to make an order under s. 103D of the Legal Profession Act after hearing the applicant on the issue of enhancement of punishment and then to file an appeal to the High Court pursuant to s. 103E of the Legal Profession Act 1976;

(c) in the circumstance, the applicant's application for judicial review is premature and amounts to an attempt to short-circuit the statutory disciplinary proceedings and appellate process provided in the Legal Profession Act 1976.

[4] Having considered the arguments raised by parties, I allowed the respondent's application in encl. 7 and struck out the applicant's application for judicial review. My reasons for so doing are as follows.

[5] It is common ground that the respondent's decision dated 13 October 2016 is not a final decision in so far as the disciplinary proceedings are concerned. Neither has the disciplinary proceedings come to an end. The respondent had *via* its decision of 13 October 2016 merely concurred with the findings of the Disciplinary Committee as regards the applicant's guilt, ie, in respect of dishonest and fraudulent conduct in breach of s. 94(3)(c) of the Legal Profession Act 1976; and conduct unbefitting of an advocate and solicitor under s. 94(3)(o) of the Legal Profession Act 1976. The respondent had disagreed with the Disciplinary Committee's recommendations as to the punishment to be imposed, and this, the respondent has every right to do so under its powers in s. 103D(2), (3) and (4) of the Legal Profession Act 1976 that provides:

> (2) The Disciplinary Board may in appropriate cases impose a greater or lesser penalty or punishment than that recommended by the Disciplinary Committee.
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> (3) Where the Disciplinary Board does not agree with the finding or recommendation of the Disciplinary Committee, the Disciplinary Board shall make such other order as it deems just.
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> (4) Before the Disciplinary Board makes an order that is likely to be adverse against an advocate and solicitor under subsection (2) or (3), it shall notify the advocate and solicitor of its intention to do so and give him a reasonable opportunity to be heard.

[6] The respondent can make an order increasing the punishment recommended by the Disciplinary Committee only after the respondent has been given reasonable opportunity to be heard. Accordingly, the respondent had given the applicant the requisite notice under s. 103D(4) of the Legal Profession Act 1976 *via* its letter dated 4 November 2016; and had in fact given the applicant further time to make representation by adjourning, at the applicant's request, the hearing fixed for 9 December 2016 to 17 February 2017, and subsequently brought it forward to 10 February 2017.

[7] Now, these acts of the respondent are clearly within its statutory powers found in s. 103D of the Legal Profession Act 1976. The applicant had lodged an objection to the respondent in respect of its decision of 13 October 2016. The respondent had fixed a date for hearing the applicant on his objections. However, even before the respondent could reasonably hear the matter of the applicant's objection and make any appropriate order on the punishment to be meted out, the applicant has stolen a march and applied for judicial review to thwart the disciplinary proceedings by challenging the respondent's decision made in the course of proceedings.

[8] It must be noted that as a general rule, in the absence of any jurisdictional issues, decisions made during the course of a statutory tribunal or administrative body's proceedings ought not to be challenged until proceedings have been completed. Courts are reluctant to intervene to review an interim or interlocutory decision prior to the conclusion of the proceeding before the administrative or *quasi*-judicial tribunal. This principle was reiterated by Mohd Zawawi Salleh J (as he then was) in *Dr Colin Lee Soon Soo v. Majlis Perubatan Malaysia* [2011] 1 CLJ 907, where the learned judge had stated:

> The rationale for this rule is that such applications for judicial review may ultimately be totally unnecessary as a complaining party may be successful in the end result, making the applications for judicial review of no value. Also, the unnecessary delays and expenses associated with such applications can bring the administration of justice into disrepute.
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> ...
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> I would associate myself with the view that applications for judicial view, especially immediate review of decisions in the course of proceedings of tribunals or administrative bodies, like the instant case, should be discouraged. Such restraint will prevent a plethora of immediate reviews and the delays which inevitably flow from them. It would also permit a fuller view of the issue by the reviewing court which will have the benefit of a more complete picture of the evidence and the case.

Similar observation was made by the Federal Court of Appeal of Canada in *Re Anti-Dumping Act and In Re Danmor Co. Ltd* [1974] 1 FC 22, where it had this to say as p. 34:

> ... a right, vested in a party who is reluctant to have the tribunal finish its job, to have the Court review separately each position taken, or ruling made, by a tribunal in the course of a long hearing would, in effect, be a right vested in such a party to frustrate the work of the tribunal.

[9] Since there is no apparent jurisdictional error, I agree with submissions of learned counsel for the respondent that the most appropriate stage for the applicant to raise any dissatisfaction he may have with regards to the conduct of the Disciplinary Committee, or even the respondent, is to wait for the conclusion of proceedings and for the respondent to make a decision or order. The applicant can avail himself of his statutory remedy of appeal to the High Court and above. See also *Cheah Foong Chiew v. Lembaga Jurutera Malaysia* [1999] 3 CLJ 242, CA; *Tetuan Choong & Co & Ors v. Lembaga Tatatertib Peguam-Peguam* [2004] 1 CLJ 574. Hence, to that extent, the filing of this judicial review application is premature.

[10] The applicant argues that the decision of the respondent dated 13 October 2016, notwithstanding that it is not a final decision, is amenable to judicial review by virtue of s. 103EA(1), (4) and (5) of the Legal Profession Act 1976. To better appreciate this argument, it would be opportune to set out s. 103EA of the Legal Profession Act 1976 in its entirety:

> (1) Where a party is aggrieved by any decision, order, ruling or direction of the Disciplinary Committee or the Disciplinary Board, other than a final order or decision made by the Disciplinary Board referred to in section 103e, the aggrieved party may file an objection in writing in respect of any such decision, order, ruling or direction with the Disciplinary Committee or Disciplinary Board, as the case may be, within fourteen days of being duly notified of the decision, order, ruling or direction.
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> (2) Where the objection raised is in respect of the composition or participation of any member of the Disciplinary Committee or the Disciplinary Board, as the case may be, in meetings, proceedings or inquiries before the Disciplinary Committee or Disciplinary Board, the procedures to deal with the objection shall be as set out in the rules made under this Part.
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> (3) After the objection referred to in subsection (2) has been dealt with, the Disciplinary Committee or the Disciplinary Board, as the case may be, shall proceed with the inquiry or proceeding until its completion.
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> (4) Where the objection raised is not related to matters referred to in subsection (2), the Disciplinary Committee or Disciplinary Board, as the case may be:
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> (a) shall make such decision, order, ruling or direction on the objection as it deems just; and
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> (b) shall proceed with the inquiry or proceeding until its completion.

(5) Where the inquiry or proceeding referred to in subsection (3) and paragraph (4)(b): A

(a) is before the Disciplinary Committee, after the completion of the inquiry or proceeding, the Disciplinary Committee shall make its recommendation to the Disciplinary Board pursuant to section 103C; or B

(b) before the Disciplinary Board, after the completion of the inquiry or proceeding, the Disciplinary Board shall make its order or decision pursuant to section 103D.

(6) The order or decision of the Disciplinary Board under paragraph (5)(b) shall be suspended from coming into effect for thirty days from the date of the order or decision or to such further time as the Court may allow to enable an aggrieved party to apply to the Court for a review. C

(7) If an aggrieved party does not apply for review, the order or decision of the Disciplinary Board shall take effect immediately upon the expiration of the period of thirty days. D

(8) Nothing in this section shall preclude an aggrieved party from raising any objections under this section as grounds of appeal in any appeal he may file under section 103E.

[11] The applicant states that on 18 November 2016, upon receiving the respondent's letter dated 4 November 2016 notifying the applicant of its decision of 13 October 2016, he had immediately lodged an objection against that decision of the respondent in accordance to s. 103EA(1) of the Legal Profession Act 1976. Applicant submits that s. 103EA(6) of the Legal Profession Act 1976 provides that the respondent's said decision of 13 October 2016 does not take effect for 30 days from date of the respondent's decision, and that the applicant is entitled to file for judicial review of that decision. The applicant states that he had filed the application for leave to issue judicial review on 19 December 2016, which he says is within 30 days of him being notified of the respondent's said decision. E F

[12] In this regard, the applicant has referred to the High Court decision in *Ling Leong Peng v. Wong Kee Teh & Anor* [2015] 10 CLJ 444, where my learned sister SM Komathy JC (as she then was) had tacitly recognised the provisions of s. 103EA of the Legal Profession Act 1976 and held that if a person was dissatisfied with any decision of the respondent, not being a final decision, then the aggrieved person should file to review that decision, if such decision comes within the purview of s. 103EA of the Legal Profession Act 1976. The applicant submits that this judicial review application fulfils all the conditions in s. 103EA of the Legal Profession Act 1976, namely: G H

(i) the respondent's decision of 13 October 2016 is not a final decision, hence, it is subject to judicial review by this court; I

A (ii) the applicant lodged an objection against the respondent's decision of 13 October 2016 within 14 days of being notified of that decision; and

(iii) the applicant filed for leave to issue judicial review within 30 days from being informed of the respondent's said decision.

B **[13]** Hence, the applicant argues that as a person aggrieved by the respondent's decision of 13 October 2016, he can avail himself of his statutory rights enshrined in s. 103EA of the Legal Profession Act 1976 to file for judicial review. Thus, the applicant maintains that this judicial review application is properly before this court, and that it is not an abuse of the court's process, nor is it frivolous or vexatious.

C

[14] Learned counsel for the respondent on the other hand submits that s. 103EA is not applicable to the present case because of the saving provisions found in s. 21(4) and (5) of the Legal Profession (Amendment) Act 2012, which amended the Legal Profession Act 1976 and introduced

D s. 103EA. Section 21(4) and (5) of the Legal Profession (Amendment) Act 2012 provides that:

> (4) Where on the date of coming into operation of this Act, disciplinary proceedings were pending before the Disciplinary Board, the proceedings shall continue under the provisions of the principal Act to those
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> E proceedings immediately before the date of coming into operation of this Act and the Disciplinary Board may make such order or decision as it could have made under authority vested in it under the principal Act immediately before the date of coming into operation of this Act.
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> (5) Any written application or complaint concerning the conduct of any advocate and solicitor or of any pupil referred to the Disciplinary Board
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> F before the date of coming into operation of this Act shall be dealt with under the provisions of the principal Act applicable to disciplinary proceedings immediately before the date of coming into operation of this Act.

[15] Now, it should be noted that s. 103EA came into force only on 3 June

G 2014. The complainant lodged the complaint on 1 October 2013, that is well before the coming into force of the new s. 103EA. And the disciplinary proceedings emanating from that complaint was still pending determination before the respondent when the amendment Act came into force. Learned counsel for the respondent submits that since s. 103EA came into force only

H on 3 June 2014 following amendments made to the Legal Profession Act 1976 through the Legal Profession (Amendment) Act 2012, which deleted the then existing s. 103E (2) and introduced the new s. 103EA, the provisions of s. 103EA is not applicable to the present case because of the saving provisions found in s. 21(4) and (5) of the Legal Profession (Amendment) Act

I 2012.

[16] Based on these undisputed facts, I agree that by virtue of the saving provisions in s. 21(4) and (5) of the Legal Profession (Amendment) Act 2012, s. 103EA of the Legal Profession Act 1976 does not have any application to the present case. Thus, to that extent, the applicant's reliance on the provisions of s. 103EA of the Legal Profession Act 1976 to ground his application for judicial review is misplaced in law. In this regard, I also find that the High Court's pronouncement in *Ling Leong Peng v. Wong Kee Teh & Anor* [2015] 10 CLJ 444 does not offer any persuasive strength to the Applicant's argument as the learned judge had not considered the effect of the saving provisions in s. 21(4) and (5) of the Legal Profession (Amendment) Act 2012 and its application on s. 103EA.

[17] The saving provisions in s. 21(4) and (5) of the Legal Profession (Amendment) Act 2012 state very clearly that in respect of complaints made before the coming into force of the Legal Profession (Amendment) Act 2012, and in respect of disciplinary hearings pending before the respondent when the Legal Profession (Amendment) Act 2012 came into force, the principal Act then prevailing shall continue to apply. The principal Act as it stood before the coming into force of s. 103EA provided in s. 103E(2) of the Legal Profession Act 1976 that:

> (1) Any party aggrieved by any decision or order made by the Disciplinary Board under subsection 100(5), (8) or (9) or section 103D shall have the right to appeal to the High Court within one month of the receipt of the notification of the decision or order complained against; and no appeal shall lie against any other decision or order made by the Disciplinary Board.
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> **(2) There shall be no judicial review against any decision or order made by the Disciplinary Board.**
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> (3) The appeal shall be fixed for hearing before a single Judge of the High Court.
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> (4) The appeal shall be by way of an originating motion setting out the ground of appeal supported by affidavit.
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> (5) Any appeal against the decision of the High Court shall lie to the Court of Appeal and thereafter to the Federal Court.
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> (6) The Bar Council may in its discretion intervene at any stage of any appeal under this section.
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> (7) The Disciplinary Board shall not be cited as a party in any appeal under this section.
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> (8) The Disciplinary Board shall have the right to appear in and address any High Court, the Court of Appeal or the Federal Court hearing an appeal under this section by an advocate and solicitor whether or not the advocate and solicitor is a member of the Disciplinary Board or the Bar Council.

Hence, from the reading of the then s. 103E(2) of the Legal Profession Act 1976, it seems clear that the law as it then stood precluded the respondent from moving the respondent's decision of 13 October 2016 into this court for judicial review.

[18] The applicant, however, submits that even if s. 103EA is inapplicable to the present case, the provisions of s. 103E (2) of the Legal Profession Act 1976 cannot be construed to oust the jurisdiction of this court and/or remove or restrict the court's inherent jurisdiction to review the respondent's decision of 13 October 2016. A decision which the applicant alleges is manifestly erroneous and made in breach of natural justice and procedural irregularity. In this regard, the applicant has referred to several case authorities and in particular the Federal Court's pronouncement in *Majlis Perbandaran Pulau Pinang v. Syarikat Bekerjasama-sama Serbaguna Sungai Gelugor Dengan Tanggungan* [1999] 3 CLJ 65 to the following effect:

> In our view, therefore, unless there are special circumstances governing a particular case, notwithstanding a privative clause, of the "not to be challenged, etc." kind, judicial review will lie to impeach all errors of law made by an administrative body or tribunal and, we would add, of inferior courts. In the words of Lord Denning in *Pearlman v. Harrow School (ibid)* at p. 70, "No Court or tribunal has any jurisdiction to make an error of law on which the decision in a case depends. If it makes such an error it goes outside its jurisdiction and *certiorari* will lie to correct it".

I agree that in the circumstances alluded by the Federal Court in *Majlis Perbandaran Pulau Pinang* this court is not completely shut out of its inherent jurisdiction by the operation of ouster clauses such as in s. 103E(2) of the Legal Profession Act 1976. However, for this court to exercise its inherent jurisdiction and disregard any privative clause, there must be clear evidence of the respondent having made an error of law that takes it outside its jurisdiction. Having combed the affidavits filed, I do not find any such jurisdictional errors having been committed by the respondent. To the contrary, the respondent was clearly acting within the statutory provisions of s. 103D(2) and (4) of the Legal Profession Act 1976 in accepting and affirming the Disciplinary Committee's findings on liability but rejecting its recommendation on punishment. The respondent had given the required statutory notice to the applicant to appear and make representations at the hearing fixed on 10 February 2017 before it pronounces the punishment.

[19] The applicant is not shut out completely from legal remedy. In my considered view, the applicant should allow the disciplinary proceedings against him to continue unhindered and attend the hearing before the respondent in respect of the punishment and allow the respondent to make its final decision. The applicant can then bring an appeal under s. 103E(2)

of the Legal Profession Act 1976, which continues to apply to the proceedings against the applicant by virtue of the savings provisions in s. 21(4) and (5) of the Legal Profession (Amendment) Act 2012. At that point in time, the court can, as part of the appeal, consider all the applicant's allegations of breaches of natural justice, procedural impropriety and such other allegations of denial of justice that he may have suffered. Thus, there is no denying that some other appropriate remedy is available to the applicant for any possible error of the respondent in this matter, when the time comes.

[20] For all the above reasons, I find that this application for judicial review is premature, and is an abuse of process of the court. Hence, I allowed encl. 7 and struck out the applicant's application for judicial review.